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Copyright Royalty Board

In the Matter of)

ADJUSTMENT OF RATES AND TERMS)
FOR PREEXISTING SUBSCRIPTION)
SERVICES AND SATELLITE DIGITAL)
AUDIO RADIO SERVICES)

Docket No. 2006-1 CRB DSTRA

**DECLARATION AND RULE 11 CERTIFICATION OF
MICHAEL B. DESANCTIS**

I am counsel for SoundExchange, Inc. ("SoundExchange") in Docket Nos. 2006-1 CRB DSTRA and 2005-5 CRB DTNSRA, and respectfully submit this declaration and certification pursuant to Rule 350.4(e)(1) per the terms of the Protective Order issued December 20, 2006 ("Order").

1. I have reviewed the written direct statement, designated testimony, and exhibits submitted by SoundExchange in this proceeding.

2. I have also reviewed the definitions and terms provided in the Order.

3. As I discuss below, and after consultation with my clients, portions of SoundExchange's written direct statement, designated testimony, and exhibits contain information that is "Protected Material" as defined by the Order.

4. Such Protected Material includes, but is not limited to (a) contracts, contractual terms or contract strategy that are proprietary, not available to the public, commercially sensitive and, at times, are subject to express confidentiality provisions with third parties; and (b) highly confidential business information, financial projections, financial data, and

competitive strategy that are proprietary, not available to the public, and commercially sensitive.

5. If this commercial or financial information were to become public, it would provide an unfair competitive advantage to the witnesses' competitors and entities with whom they do business (some, but certainly not all, of whom are parties to this proceeding). Public disclosure of this information would place SoundExchange and those it represents at a significant commercial disadvantage and would seriously jeopardize their business interests.

6. Portions of the written direct statement and their accompanying exhibits submitted by SoundExchange clearly meet the definition of "Protected Material." Specifically, as summarized below, the following witnesses' statements and exhibits contain commercial and financial material that is proprietary, not known to the public and the disclosure of which would place SoundExchange and those it represents at a significant commercial disadvantage and would unfairly advantage other parties and third parties.

a. The exhibit sponsored by economist Michael Pelcovits is a proprietary report containing restricted commercial and financial information regarding record company investment ratings, valuations, stock considerations, and future economic projections. This third-party report is not licensed for public disclosure and, if disclosed, would competitively disadvantage the parties that created it and hold the rights thereto.

b. The statement of economist Janusz Ordoover relies upon private digital license agreements and other contracts. In his testimony, Dr. Ordoover discusses commercial and financial information about the rates for copyright licenses for digital distribution under recent voluntary agreements between record companies and service providers, as well as the rates for interactive and non-interactive streaming music video services.

Dr. Ordovery's testimony also contains restricted financial information about sound recording copyright royalties and fees for portable, interactive webcasting distribution channels, for permanent audio downloads, and for portable and non-portable interactive subscriptions, as well as information on licenses for computer downloads versus wireless cell phone music downloads. The information contained in this testimony is not available to the public. If disclosed, this detailed commercial and financial information would competitively disadvantage the record companies while providing a commercial advantage to those they do business with and to their competitors. In support of his testimony, Dr. Ordovery also sponsors exhibits that are proprietary reports containing commercial and financial information about record company investment ratings, valuation, stock considerations, and future economic projections. These third-party reports are not licensed for public disclosure and, if disclosed, would competitively disadvantage the parties that created the reports and hold the rights thereto.

c. The statement of Charles Ciongoli, Chief Financial Officer of Universal Music Group ("UMG"), contains detailed non-public financial information about UMG's costs, including detailed information on external direct costs of sales, manufacturing and other variable distribution costs, overall and line-item marketing costs, non-recoupable costs and write-offs, capitalized recording costs and advances, overall and individual department overhead costs, third-party marketing costs, and inventories as of the end of 2005. Mr. Ciongoli also sponsors an exhibit which contains restricted financial information about UMG's income and expenses. The information in both the written testimony and the exhibit is at a level of specificity that is not disclosed to the public; if it

were disclosed, it would competitively disadvantage UMG while providing a competitive advantage to other parties in the industry.

d. The statement of Lawrence Kenswil, President of Universal eLabs, contains detailed non-public financial information about negotiated rates and terms for video agreements in UMG's licenses, as well as negotiated rates and terms for permanent audio downloads, downloaded cell phone tones, and wireless audio downloads. Moreover, Mr. Kenswil's testimony includes restricted commercial and financial information on UMG's annualized revenues from the electronic distribution of recorded music in the United States, UMG's licensing practices and the ways that various considerations are manifested therein, UMG's licensing agreements with non-portable and portable services, and UMG's negotiated rates under music video streaming licenses. Mr. Kenswil also sponsors an exhibit containing restricted commercial and financial information in original and amended licensing agreements for use of UMG's sound recordings, including information on payments and fees, content fees for portable and non-portable subscriptions, and non-monetary considerations and contractual terms within these agreements. These detailed portions of Mr. Kenswil's testimony and exhibit contain restricted information not publicly available — information that, if disclosed, would put UMG at a serious competitive disadvantage, while providing its competitors and other parties with an unfair commercial advantage.

e. The statement of Mark Eisenberg, Executive Vice President of Sony BMG, contains detailed non-public commercial and financial information about Sony BMG's business practices and finances, including information on negotiated rates for specific services, such as for on-demand subscription services, distribution of permanent audio

downloads, single-track permanent downloads delivered over cell phone networks, ringtones, soundclips, wireless music service, and wireless full-length audio downloads agreements. In addition, Mr. Eisenberg's testimony references restricted commercial and financial information about Sony BMG's typical rate structure, its calculation of rates under recent deals for "tethered" and "portable" subscription offerings, its video streaming services, and its negotiated deals for online exhibition rights for its video catalog. Mr. Eisenberg also sponsors exhibits that contain confidential agreements for use of Sony BMG's sound recordings, the contents of which include information on rates and other contractual terms therein. None of this information is publicly known or available. Disclosure of the commercial and financial details contained in Mr. Eisenberg's testimony and exhibits would competitively disadvantage Sony BMG while providing its competitors with an unfair commercial advantage.

f. The statement of Michael Kushner, Senior Vice President of Atlantic Recording Corp. ("Atlantic"), contains detailed non-public commercial and financial information about Atlantic's line-item costs, including costs for A&R investment, design and marketing for new releases, music video production, new media, and overhead for Art, A&R, marketing, and new media departments. In addition, Mr. Kushner provides restricted commercial and financial information through his comparison of Atlantic's costs, profits, and losses for certain artist's 2003 albums versus their 2006 albums. He also discusses non-public commercial and financial information about Atlantic's current catalog and new releases, its physical album and catalog sales, and its revenues from all forms of digital exploitation. The detailed information in Mr. Kushner's testimony is not

publicly known. If disclosed, this information would provide a commercial advantage to Atlantic's competitors while placing Atlantic at a competitive disadvantage.

g. The statement of Edward Chmelewski, Co-Founder and President of Blind Pig Records, contains detailed non-public commercial and financial information about Blind Pig's revenues, budget, manufacturing costs, savings strategies, and CD return percentage for 2005 and through September 2006. None of this information is publicly known or available. If this non-public information were publicly disclosed, it would competitively disadvantage Blind Pig while also providing a commercial advantage to its competitors.

h. The statement of Dan Navarro, recording artist and songwriter, contains certain confidential detailed financial information about Mr. Navarro's non-public manufacturing costs for his music. If publicly disclosed, this restricted information would place Mr. Navarro at a competitive disadvantage.

i. The exhibits sponsored by Barrie Kessler, Chief Operating Officer for SoundExchange, contain restricted financial information regarding payments SoundExchange received for copyright royalties from different licensees, as well as the rates these licensees used to calculate these payments. This information is not publicly known or available, and SoundExchange is required by law and by agreement to maintain its confidentiality. Public disclosure of such confidential information likely would competitively disadvantage SoundExchange, the entities it represents, and the subject licensees.

7. In addition to these written statements and exhibits, SoundExchange also has submitted designated testimony from Docket No. 2005-1 CRB DTRA from economist Michael Pelcovits and SoundExchange Chief Operating Officer Barrie Kessler. This

testimony and the accompanying exhibits include detailed discussion of commercial and financial information related to digital license agreements entered into by SoundExchange members, and detailed discussion of SoundExchange's confidential business practices. This testimony and accompanying exhibits were and remain Restricted in Docket No. 2005-1, and include information that is proprietary, not known to the public, and commercially sensitive. If disclosed, it would competitively disadvantage SoundExchange and the entities it represents and would provide an unfair competitive advantage to other parties and third parties.

8. The commercial and financial information from the written direct statement, designated testimony, and exhibits detailed above is proprietary, not known to the public, and commercially sensitive. It must be treated as "Protected Material" in order to prevent certain business and competitive harm that would result from the disclosure of such information while, at the same time, enabling SoundExchange to provide the Copyright Royalty Board with the most complete record possible on which to base its determination in this proceeding.

Pursuant to 28 U.S.C. §1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: January 17, 2007



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CERTIFICATE OF SERVICE

I, Michael B. DeSanctis, hereby certify that a copy of the foregoing **Declaration and Rule 11 Certification of Michael B. DeSanctis** has been served this 17th day of January, 2007 by electronic mail and by overnight mail to the following persons:


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